

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DAVID A. ENGLAND,) No. C 09-05054 JW (PR)
Plaintiff,) ORDER OF DISMISSAL
vs.)
JOHN DOE,)
Defendant.)
_____)

Plaintiff filed a letter with this court which the Court construed as an effort to file a civil rights action. Plaintiff was directed to file a complaint within thirty days. (Docket No. 3.) On November 9, 2009, plaintiff filed a letter with this Court stating that he never intended to file a civil case, and requesting the action be dismissed. (Docket No. 4.)

A plaintiff has the absolute right to dismiss his or her action by filing a notice of dismissal “at any time before service by the adverse party of an answer or of a motion for summary judgment.” Fed. R. Civ. P. 41(a)(1)(i). Said dismissal may be with or without prejudice, but unless plaintiff’s notice of dismissal states otherwise, it is deemed to be “without prejudice.” See Fed. R. Civ. P. 41(a)(1); Humphreys v. United States, 272 F.2d 411, 412 (9th Cir. 1959). No court order is

United States District Court

For the Northern District of California

1 required. Plaintiff's notice of dismissal is effective by itself to terminate the action:
2 “[A]n action may be dismissed by the plaintiff without order of the court . . . by
3 filing a notice of dismissal.” Fed. R. Civ. P. 41(a)(1); see also Hamilton v.
4 Shearson- Lehman American Exp. Inc., 813 F.2d 1532, 1534-1536 (9th Cir. 1987)
5 (Rule 41(a)(1)(i) does not require leave of court to dismiss the action).

6 Plaintiff's letter, which the court construes as his “Notice of Dismissal,” was
7 filed before service by the adverse party of an answer. Therefore, the Court finds
8 that plaintiff has the absolute right to dismiss his action voluntarily. See Fed. R.
9 Civ. P. 41(a)(1)(i). Based on plaintiff's request for voluntary dismissal, this action is
10 DISMISSED without prejudice. See id.

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12 DATED: December 18, 2009

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JAMES WARE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

DAVID A. ENGLAND,

Case Number: CV09-05054 JW

Plaintiff,

CERTIFICATE OF SERVICE

v.

JOHN DOE,

Defendant.

/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 12/18/2009, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

David A. England B-77911
CSP Solano
P. O. Box 4000
Vacaville, CA 95696-4000

Dated: 12/18/2009

Richard W. Wiking, Clerk
/s/ By: Elizabeth Garcia, Deputy Clerk